

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

VISIBLE SYSTEMS CORPORATION,

Plaintiff

v.

Civil Action No. 04-CV-11610-RGS

UNISYS CORPORATION,

Defendant

**AFFIDAVIT OF STEPHEN H. GALEBACH**

The undersigned deposes and states as follows:

1. My name is Stephen H. Galebach. I am lead counsel for plaintiff-appellant Visible Systems Corporation in the above-captioned action.
2. I was trial counsel for plaintiff at the trial of this action in Springfield, Massachusetts July 23, 2007 through July 31, 2007.
3. I submit this affidavit in support of plaintiff-appellant's statement of proceedings for which transcripts are not available from the district court, pursuant to Rule 10, Fed. R. App. P.
4. I was present throughout a conference of counsel with Judge Richard G. Stearns in chambers at the start of the first trial day, July 23, 2007, at 9:30 a.m., at which Judge Stearns ruled on the motions *in limine* that had previously been filed by the parties. His rulings were as follows:

(a) granted Defendant's Motion in Limine to Preclude Evidence or Argument on Alleged Bad Faith;

(b) considered Defendant's Motion in Limine to Preclude Evidence or Argument on "Accounting" or "Damages" Remedies, and decided to allow evidence and argument as to damages suffered by Visible, but not evidence or argument as to profits of defendant

Unisys Corporation, because the Court considered such an “accounting” to be an equitable remedy; thus effectively granting in part and denying in part said motion;

(c) denied plaintiff’s Motion in Limine to preclude testimony of defendant’s witness Nancy McCarthy; and

(d) denied defendant’s Motion in Limine to Preclude or Limit Expert Testimony.

5. The persons present at the above-described conference were Hon. Richard G. Stearns, attorneys Anthony Doniger and William Boesch for defendant Unisys Corporation, attorneys Stephen Galebach and Joseph Rendini for plaintiff Visible Systems Corporation, and a court reporter, who to best my recollection was one of the two reporters who covered the first day of trial.

6. I was also present throughout a conference of counsel with Judge Richard G. Stearns in chambers during the morning of the third trial day, July 25, 2007, at which Judge Stearns ruled on the admissibility of Unisys production documents Bates nos. 5500 and 5502. After examining these documents in the presence of counsel, Judge Stearns stated that he would not let them in.

7. During the same conference in chambers on the morning of July 25, 2007, I requested enforcement of a trial testimony subpoena that had been served on Joseph McGrath of Unisys Corporation. Defendant’s counsel Anthony Doniger objected that Mr. McGrath was outside the 100-mile subpoena range of the Court. I responded that the subpoena was valid because Mr. McGrath is a corporate officer. Judge Stearns did not enforce the subpoena.

8. Present at the conference in chambers on July 25, 2007 were Hon. Richard G. Stearns, a court reporter, attorneys Anthony Doniger and William Boesch for defendant Unisys

Corporation, and attorneys Stephen Galebach and Joseph Rendini for plaintiff Visible Systems Corporation.

9. I do not have a recollection of proceedings not reflected in transcripts for Friday, July 27, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

/s/Stephen H. Galebach  
Stephen H. Galebach

Executed this 25th day of January 2008